

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.927 of 1994

28.1.2006

Between:

Sriram Anjamma, W/o.Ramalingeswara Rao

And another

... Petitioners

AND

Thota Koteswara Rao, S/o.Narasimhaiah

And others

... Respondents

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ORDER:

The petitioners claim to be the owners of agricultural dry land admeasuring Acs.10.90 comprised in survey No.78/1 of Kanchikacherla village in Krishna District (hereafter called, the subject land). The first petitioner claims to be the daughter of late Chintalapudi Subbamma and second petitioner claims to be the widow of the paternal grandson of Subbamma. They filed the present writ petition being aggrieved by the order dated 13.8.1992 in C.M.A.No.7 of 1992 passed by the Court of the District Judge, Krishna District at Machilipatnam confirming the order of the Special Officer-cum-District Munsif, Nandigama in A.T.C.No.11 of 1980 dated 16.4.1984.

The first respondent filed A.T.P.No.17 of 1977 before the Special Officer under Section 16 of A.P. (Andhra Area) Tenancy Act, 1956 (the Act, for brevity) seeking a declaration that he is a cultivating tenant of the subject land and also for permanent injunction restraining the owners from interfering with the possession. Initially, A.T.C. was filed by Chintalapudi Subbamma and after her death, the petitioners herein

were brought on record, as her legal heirs. The first respondent herein, who filed the application under Section 16 of the Act pleaded that he obtained lease of the subject land in Fasli 1386 on 31.3.1975, that as agreed the actual rent is Rs.4,900/- and the landlady agreed to reduce the rent in second year to Rs.2,400/-. He also pleaded that he has been cultivating tobacco on the land. When he tried to pay the rent, the landlady evaded receiving the rent, and therefore, he filed application under Section 16 of the Act. The said application was subsequently transferred to the Court of the District Munsiff, Nandigama, having jurisdiction of A.T.C.s and renumbered as A.T.C. No.11 of 1980.

By the time, the matter was transferred, one Chintalapudi Gopala Krishna Murthy, S/o.Subbamma (who also died subsequently) filed a counter affidavit, before the Special Officer, denying the tenancy. He alleged that Subbamma was having only Acs.5.45 and her daughter Sriram Anjamma owns Acs.5.45, that Subbamma is suffering from paralysis for more than four years, she being unable to talk, and that Sriram Visweswara Rao, her grandson was cultivating the land. The possession of the tenant was also denied.

Before the primary authority, the first respondent examined himself as P.W.2 and examined K.Sambaiah as P.W.2, besides marking Exs.P.1 to P.8. The husband of the second petitioner examined himself as R.W.1 and also brought in R.Ws.2 and 3 to give oral evidence in his support. The petitioners herein marked Exs.R.1 and R.2, which are the partition deeds. The primary authority placed reliance on Exs.P.1 and P.2 and came to the conclusion that the first respondent herein was in possession of the petition schedule land prior to filing of the petition, and therefore, he is entitled for protection under the Act. The learned District Munsif relied on Exs.P.2 and P.3, however, rejected Exs.P.4 to P.7. After appreciating the evidence, by order dated 16.8.1985, A.T.C.No.11 of 1980 was allowed declaring the first respondent herein as cultivating tenant. The learned District Judge, the appellate authority, affirmed the order passed by the primary authority.

Initially, the writ petition was dismissed as infructuous based on the submission made by the Junior Counsel representing the learned Counsel for the petitioners. Subsequently, Review W.P.M.P. No.28862 of 2005 is filed and the same is allowed today and the writ petition was again heard.

The learned Counsel for the petitioner submits that the Courts below have not appreciated the evidence properly, that the Courts below failed to see that the first respondent was allowed only to take the tobacco crop on the land and that he was never a cultivating tenant. These contentions are refuted by the learned Counsel for the first respondent.

Under the Act, exclusive jurisdiction is vested in duly constituted authorities, namely, the Special Officer-cum-Junior Civil Judge as primary authority and the District Judge as appellate authority, to decide all the disputed questions of fact arising between the landlord and the tenant. The question whether a person as a cultivating tenant is entitled to the benefits under Section 10(1) of the Act, is a matter, which squarely falls within the jurisdiction of the primary authority as well as the appellate

authority. On consideration of the evidence, both the authorities have come to the conclusion that though a person is a cultivating tenant, unless and until a finding is perverse and is one, which is not based on any evidence, ordinarily in a writ petition, the Court cannot interfere with the finding. In this case, Ex.P.1 is a crucial document. P.W.1 as corroborated by P.W.2 spoke in the witness box that after obtaining the tenancy, he raised tobacco crop duly registering as a tobacco grower under Ex.P.1 dated 08.2.1977 and that he is also in possession of the land. He produced Exs.P.2 to P.7, which are certified copies of Adangals for the Faslis 1385 to 1389. Exs.P.4 to P.8 are *post litem* and the learned primary authority rightly rejected those documents. Ex.P.6 is a certified copy of Adangal showing the first respondent as cultivating tenant and it is further corroborated by Exs.P.2 and P.3, which are certified copies of Adangals dated 21.4.1982 evidencing the possession of the first respondent. When the first respondent was not in a position, the onus was on the petitioners herein to explain properly the veracity of Exs.P.1 to P.3. On this, the petitioners miserably failed before the primary authority as well as appellate authority. Though they pleaded that the husband of the second petitioner was cultivating the land and that he directed his servants to obtain the registration as tobacco grower, there was no corroboration of the said statement. In that view of the matter, the submission of the learned Counsel for the petitioner that the authorities below failed to consider the evidence properly cannot be accepted. In any view of the matter, the question is whether the fact and the finding of fact recorded by the statutory authority must receive approval of this Court unless perversity is properly pleaded nor proved before this Court.

The writ petition is accordingly dismissed. No costs.

(V.V.S.RAO,J)

January 28, 2006.

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